right of navigation. A consideration of the relatively vast importance of the right of fishery both in New Brunswick and in Oregon, where the principal case was decided, may throw some light on the modification of the old rule in these cases.

HIGHWAYS—LIABILITY OF TRACTION COMPANY FOR OBSTRUCTING HIGHWAY UNDER ORDERS OF COUNTY COMMISSIONERS.—Defendant traction company dumped dirt on the highway along which its tracks ran; it did this under orders from the county road commissioners, who wished to use the dirt for the repair of another road which intersected the highway at a point near where the dirt was dumped. No light or other danger signal was placed on the dirt, and plaintiff was injured by running into the pile of dirt in the night-time. *Held* (by a divided court), that defendant company was not liable, as it had merely done a lawful act in a lawful manner, under orders from a competent public authority. *Shepard* v. *Utah Light & Traction Co.* (Utah, 1919), 184 Pac. 542.

It is clear that a person who wrongfully places an obstruction in a highway becomes liable to persons sustaining injuries thereby. *Dixon* v. *Ry.*, 100 N. Y. 170; *Dunlap* v. *Ry.*, 167 N. C. 669. But under the Utah statutes the county officials had the right to obstruct this highway temporarily for the purpose of repairs, and this right was paramount to the right of the public to uninterrupted travel; *Lund* v. *St. Paul etc. Ry.*, 31 Wash. 286; *Stern* v. *Spokane*, 73 Wash. 118. The court held that this was equally true though the material was to be actually used in repairing another highway; and, there being nothing unlawful *per se* in the manner of delivery by the defendant, and the latter acting only under the direction of the county, its act was also lawful. The holding is that the whole act was justifiable, except as to the negligence of the responsible county official in failing to put up danger signals, which was said to be the proximate cause of the accident. The county was not a party in the present case, and, under the Utah law, would be immune from any such action as the present. The defendant was considered as a mere instrumentality of the county, and is expressly distinguished from an independent contractor. The dissent proceeds on the ground that public officials must not interfere with the use of a highway to any greater extent than is absolutely necessary; that it was not absolutely necessary to dump this dirt at this place on the highway in question, for the repair of another highway, though it probably was convenient to do so; that, therefore, the act of the county was unlawful and that of the defendant, acting under the county, was equally so. This doctrine was also recognized in *City of Louisville* v. *Tomkins* (Ky.), 122 S. W. 174. A municipal corporation undoubtedly has the right to close a street or highway temporarily under certain conditions. The real question here seems to be whether such obstructions must be limited to those which are absolutely necessary, or whether the doctrine of reasonable necessity should apply. It is submitted that the doctrine of reasonable necessity is based on more sound reason and would work out more equitably. As applied to abutting owners this right was held to be limited by reasonable necessity in *Mfg. Co.* v. *N. Y. etc. Ry.*, 76 Conn. 311.

In 2 DILLON, MUNICIPAL CORPORATIONS (4th Ed.), § 730, speaking of the temporary obstruction of highways, the author says: "there need be no absolute necessity; it suffices that the necessity is a reasonable one." Under this view the decision in the present case is perfectly sound.

INTOXICATING LIQUORS—AUTOMOBILE ILLEGALLY TRANSPORTING LIQUOR SUBJECT TO FORFEITURE—OWNER MAY RECLAIM.—The owner of an automobile sold it on instalments, retaining legal title until payment in full. The vendee used the automobile in violation of the prohibition statute of Utah forbidding transportation of intoxicating liquor, and the automobile was seized and sought to be forfeited to the state as provided by said statute. *Held*, (1) the words of the statute authorizing the officer to seize the "intoxicating liquors, vessels and other property so unlawfully used" were intended to include automobiles; (2) the owner may reclaim his property from the state by proving his own innocence by a preponderance of the evidence. *State* v. *Davis* (Utah, 1919), 184 Pac. 161.

Such statutes have been held constitutional. *Mack* v. *Westbrook*, 148 Ga. 690; *Maples* v. *State* (Ala., 1919), 82 So. 183. The first point has arisen in only two states (Oklahoma and Utah) because the prohibition statutes of other states specify clearly that vehicles are subject to seizure and forfeiture. In *Sharpe* v. *State* (Okla., 1919), 181 Pac. 293 (under a statute giving the officer authority to "seize the liquor, bars, furniture, fixtures, vessels and appurtenances so unlawfully used") it was held that an automobile is not an "appurtenance," and hence not subject to seizure. On the second point, the federal courts have taken a different view of forfeitures for violation of the revenue laws, holding the proceedings to be *in rem* and considering the property itself as the offender and therefore liable to forfeiture regardless of the personal innocence of the owner of said property. *United States* v. *Two Bay Mules*, 36 Fed. 84; *Heidritter* v. *Elizabeth Oil Co.*, 6 Fed. 138; *United States* v. *One Copper Still*, Fed. Cas. No. 15, 928. See also *State ex rel. Prato* v. *District Court*, 55 Mont. 560. But it has been held under prohibition statutes that the property of innocent persons is not to be forfeited to the state unless the statute clearly indicates the legislative intent to that effect. *State* v. *Jones-Hansen-Cadillac Co.* (Nebr., 1919), 172 N. W. 36. Such an intent was held to be expressed in a statute providing that "no property rights of any kind shall exist in the liquors mentioned in section one of this act, * * * or in any vessel, fixture, furniture, implements, or vehicles, when the said liquors or other property mentioned are kept, stored, or used for the purpose of violating any law of this state." *White Auto Co.* v. *Collins*, 136 Ark. 81. Where no such intention was indicated in the statute, it was held that an innocent mortgagee of an automobile should not lose his interest in the chattel because the mortgagor used it for the illegal transportation of liquor. *Seignious* v. *Limehouse*, 107 S. C. 545; *Maples* v. *State*, *supra*. And it has been decided that an innocent owner of a vehicle does not lose his property because his bailee uses the vehicle for the illegal transportation of liquor. *Griffin* v. *Smith* (Ga., 1919), 99 S. E. 386; or when his property is taken without his knowledge and so used. *Moody* v. *McKinney*, 73 S. C. 438. The explanation